

IN THE
Supreme Court of the United States
October Term, 1990

STATE OF FLORIDA,

Petitioner,
vs.

TERRANCE BOSTICK,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME
COURT OF FLORIDA

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 26, 1990
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65 PK

TABLE OF CONTENTS

	<i>Page(s)</i>
Chronological list of relevant docket entries	JA-1
Order denying Motion to Suppress filed 8-4-86 . . .	JA-2
Defendant's Motion to Suppress filed 12-20-85 . . .	JA-3
Excerpts from transcript of Suppression Hearing 3-24-86	JA-5
Excerpts from Deposition of George Black filed 6-11-86	JA-51
Excerpts from Defendant's Supplemental Memorandum filed 6-18-87	JA-61

**CHRONOLOGICAL LIST OF RELEVANT DOCKET
ENTRIES**

Sept. 1, 1985	Information
Dec. 20, 1985	Defendant's Motion to Suppress
Dec. 20, 1985	Defendant's Statement of Facts and Memorandum of Law
March 24, 1986	Hearing on Motion to Suppress Deposition filed of Bryan K. Williams (taken 3-19-86)
June 11, 1986 ¹	Deposition filed of George Black (taken 6-6-86)
June 18, 1986	Supplemental Memorandum in Support of Defendant's Motion to Suppress
August 4, 1986	Order Denying Motion to Suppress
Sept. 9, 1986	Hearing on Change of Plea
Oct. 8, 1986	Notice of Appeal
Nov. 1, 1986	Amended Order of Probation (nunc pro tunc 10/8/86)
April 8, 1987	Fourth District Court of Appeal Opinion (Per Curiam Affirmance)
July 22, 1987	Fourth District Court of Appeal Opinion on Rehearing
Nov. 30, 1989	Supreme Court of Florida's Opinion

¹ Although not listed in the circuit court docket sheet, this is included in the circuit court case file, with a handwritten notation on cover page indicating "filed in open court 6/11/86."

IN THE
**Circuit Court of the Seventeenth
Judicial Circuit, in and for
Broward County, Florida**

Case No.: 85-10543 CF

JUDGE SEAY
STATE OF FLORIDA,

TERRANCE BOSTICK,

vs.

Plaintiff,

Defendant.

ORDER

THIS CAUSE having come on to be heard on Defendant's/*Plaintiff's* Motion TO SUPPRESS and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 4th day of August, 1986

/s/
Circuit Judge

Copies furnished:
State Attorney
Max Engel, Attorney for Defendant

1

IN THE
**Circuit Court of the Seventeenth
Judicial Circuit in and for
Broward County, Florida
Criminal Division**

CASE NO. 85-10543 CF

STATE OF FLORIDA,

Plaintiff,

vs.

Fla. Bar No. 109795

TERRANCE BOSTICK,

Defendant.

MOTION TO SUPPRESS

COMES NOW the Defendant, TERRANCE BOSTICK, by and through his undersigned attorney and files this Motion to Suppress and as grounds therefor states:

1. That the search of Defendant seated as a passenger inside of a Greyhound bus lacked probable cause.
2. That no permission and/or authorization was given the police officers by Defendant to conduct a search of Defendant's belongings.
3. That if the police officers proceeded to search Defendant with what they deemed was permission said permission was the result of coercion and the intimidating circumstances surrounding the bus boarding.

4. That the Broward County Sheriff Department has no written authority to enter said buses arbitrarily without specific purposes or knowledge of any criminal act taking place, and that in this case the police officers admit no specific authorization was received from the bus driver of Defendant's bus, nor was there any reason [sic] suspicion and/or probable cause to believe Defendant nor any other passenger was committing a crime on that particular bus on that particular morning prior to the police boarding.

WHEREFOR we pray this Honorable Court enter an Order Suppressing the evidence obtained due the illegal search and seizure.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to the State Attorney's Office 201 S.E. 6th Street, Ft. Lauderdale, Fl., this 17th day of December, 1985.

LAW OFFICES OF MAX P. ENGEL
Attorney for the Defendant
1461 N.W. 17th Avenue
Miami, Florida 33125
305/325-1810

BY: _____/s/_____

LOUIS B. STOSKOPF
STATE OF FLORIDA)
COUNTY OF BROWARD)

Russell E. Seay, Jr., J.

IN THE
Circuit Court of the 17th Judicial Circuit
STATE OF FLORIDA,

Plaintiff,

vs.

No. 85-10543

TERRANCE BOSTICK,

Defendant.

Proceedings had and taken before the Honorable Russell E. Seay, Jr., one of the Judges of said Court, at the Broward County Courthouse, commencing at or about 2:30 o'clock P.M., March 24, 1986, in the City of Fort Lauderdale, County of Broward, State of Florida, and being a Motion to Suppress.

APPEARANCES:

JAMES DEHART, ESQUIRE
Assistant State Attorney
appearing on behalf of the State of Florida.

LOUIS STOSKOPF, ESQUIRE
appearing on behalf of the Defendant.

MR. STOSKOPF: I subpoenaed — you might recall, this has been up for a hearing before and we had a continuance to subpoena one of the witnesses. In fact, there were two witnesses. A witness I knew the name and a John Doe who were on the bus on this particular morning and were young kids. I think one testified he was 17 up at the

Job Corp school in Kentucky. One returned, I think — well, this Friday would be two weeks. We took his deposition last Wednesday. The basis of the deposition was that he would be out of the State, back into Kentucky. He was supposed to be down one week and return.

At his deposition last Wednesday, which Mr. Dehart attended and the deposition has been filed of record, he indicated that his leave was extended and he would be here until this week. Upon hearing that, I issued a subpoena on Friday. It was served, according to the process server, as of noon today. In fact, the young fellow called me Saturday morning in the office and said he had just been served a subpoena. He understood his deposition would suffice for this hearing and I said, well, since you indicated you would be in town, I didn't know if you would accept this deposition or not in lieu of the fact he was living in Kentucky now and he indicated he might have trouble getting there. I said, if you do, call me at 1:00 o'clock and I would make some arrangements to be up there. He lives on 45th Avenue, I believe, North Miami.

The other, John Doe, turned out to be Eric Green, who was on the bus on that particular morning and as [sic] a friend of Williams up in Kentucky. They did not know each other before this incident. They rode together on the bus.

Eric Green, according to Mr. Williams, was due to arrive last Friday. He lives up here in Fort Lauderdale. I called the Job Corp Friday and they told me about your previous order about releasing the information as to Williams and they said, well, they would give me the information. They called back Friday afternoon and gave me Mr. Green's address up here in Fort Lauderdale. The process server, as of noon today, informed my secretary that he did serve the subpoena on Mr. Green through his, I believe, a sister; someone over 18 in that house and he was supposedly in

town. Whether or not he's actually arrived here from Kentucky or not, Judge, I can't say for sure, although the person in the house indicated to the process server that he was in town. As of 2:30, neither boys, neither one of the two boys are here but they have been served with a subpoena. I have the deposition of Mr. Williams. So this case is going to stem on the issue of fact on consent of search on the bus.

I would ask Your Honor, under the circumstances, to consider the deposition of Mr. Williams in this evidentiary hearing and if Your Honor would consider to take the testimony today of the police officers. Both police officers are here and the defendant is here and, then, hold your decision until such time as, hopefully, I can get a deposition from Green or bring him into (sic) testify. But if Mr. Dehart is present, we'll take his deposition up here in Broward County. He's from Fort Lauderdale. He's also 17 years old.

I don't know if they know the impact of being served with a subpoena or not but neither one are here.

THE COURT: But you do have the deposition of one of them?

MR. DEHART: Yes, sir.

MR. STOSKOPF: On Williams, yes. Mr. Dehart has been served with a copy. Well, I gave him a copy. It was given to me this morning from the court reporter and the original in is (sic) the court file. Mr. Dehart has gone over it with the officer.

THE COURT: He couldn't add much more if he were here, would he?

MR. STOSKOPF: No. I have no objection. In fact, under the circumstances, I would ask that you take the deposition into consideration on behalf of the defendant.

THE COURT: All right.

MR. STOSKOPF: He's our witness.

THE COURT: All right. We'll see what happens with the other one. If he doesn't show today, though, you would have to follow up with that.

MR. STOSKOPF: Well, he's supposed to be here a week on leave. They confirmed that through the Job Corp. I assume he's in Fort Lauderdale. He's been served with a subpoena, although not individually, through someone over 18 at his house that he resides in. Apparently, it's his family's house here in Fort Lauderdale, although he's been living in Kentucky since August. And I understand from Williams that their schooling is, like, a two-year tour of school up there. So they can be classified as a Kentuckian resident although they're not 18.

THE COURT: Yes. Well, you would have to get a rule to show cause if you wanted to pursue it.

MR. STOSKOPF: Well, would you reserve that to the end of the hearing to see if you deem his testimony pertinent?

THE COURT: Sure.

(Thereupon OFFICER JOSEPH NUTT was called as a witness on behalf of the Plaintiff and, having been duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION BY MR. DEHART:

Q Mr. Nutt, state your age, please for the record?

A Twenty-six.

Q On August 27th of 1985, did you come in contact with Terrance Bostick?

A Yes. I arrested Terrance Bostick, seated right there in the blue suit (indicating).

Q At the Greyhound Bus Station, Fort Lauderdale, Broward County, State of Florida?

A Yes.

Q At that time, how were you dressed?

A Plainclothes and I was wearing a green windbreaker with Broward County Sheriff's Office written on it and, also, with patches on it.

Q Did you have a gun?

A Yes.

Q Was the gun concealed or was it exposed?

A Concealed.

Q Was anybody else with you when you made contact with Terrance Bostick?

A My partner, Steven Rubino.

Q When you made contact with Mr. Bostick, was he on the Greyhound bus?

A Yes.

Q When you made contact with Terrance Bostick, what tone of voice did you use to speak to him?

A Normal conversational tone of voice.

Q Tell the Judge what Mr. Bostick was doing just prior to your making contact with him and what he had thought your contact with him was?

A He was in the very back of the bus resting on a red bag. I approached him, identified myself and asked him where he was traveling to. He said, Atlanta. I asked to see his ticket and I.D. and, then, he let me look at those. I returned those to him. I asked him for permission to search his bag for drugs. He said the red bag was his. He gave it to me to search. I searched it. I did not find any drugs.

There was a bag in the overhead rack which my partner asked him if that was his and he said, it was. I asked him to search that for drugs and he let me search that. I searched it and found the cocaine. I placed him under arrest.

Q What color was the bag you found the cocaine in?

A Blue.

Q Mr. Bostick was on the very last seat of the bus?

A Yes.

Q Where was your partner situated during the time in which you were talking to Mr. Bostick?

A Behind me further toward the front of the bus.

Q Mr. Bostick was in the very last seat on bus on the driver's side; correct?

A Yes. It's a larger seat. It's, like, almost two-thirds; full seat.

Q Was he lying down when you went back there?

A Initially, when I walked on the bus, I think he was.

Q Using the red tote bag as a pillow?

A Yes.

Q Did you ever find out whether or not, in fact, that red tote bag did belong to Mr. Bostick?

THE COURT: The red or the blue?

Q (By Mr. Dehart) The red one.

A The red tote bag did not have contraband in it and after we placed Mr. Bostick under arrest, we seized the red bag and the blue bag, both of which he said were his. We removed him from the bus and, at that point, another individual — his name is listed in the report. I think his last name is Williams. He came off the bus and said, "Hey, wait a minute, guys. That red bag is mine."

And to verify that, we asked Bostick and Bostick said, yes, the red bag is not really mine. I just borrowed it from that guy to use as a pillow.

Then to verify it even further, we checked with the bus driver. Did he, in fact, see anybody carry the red bag on the bus and he identified Williams as the guy who carried the red bag on the bus. So being that we felt that everybody pointed to the ownership of the red bag belonging to Williams and there was no contraband in it, we gave that bag to him. We did keep the bag which Bostick said was his, the bluish bag which contained the drugs.

Q When you made contact with Mr. Bostick, did you ask for identification?

A Initially, I showed my identification and later on, as I stated, I asked Bostick to see his ticket and some I.D. and he showed me both and, then, I returned them to him.

Q Did you impede his way getting on the bus or block his way getting off the bus?

A No.

MR. DEHART: I have no further questions.

CROSS-EXAMINATION BY MR. STOSKOPF:

Q All right. You didn't have a ticket to board this bus, either, Officer, did you?

A No.

Q Did you have specific permission from the driver of this particular bus on this particular day to enter that bus?

A I don't recall. I have seen the bus driver there many times and he knows us and he knows what we do on the bus but, this day, I don't recall whether I saw him or not before I boarded the bus.

Q Well, you don't recall if you did; is that correct?

A That's right.

Q Do you recall giving a deposition, Officer, to me on —

A I gave you a deposition.

Q Do you recall the answer to this question, "Now, before you boarded the bus on that morning, did you seek out and receive permission from that particular bus driver to enter the bus?"

You answered, no.

Do you recall, then, that you did not have permission?

A If it's down there, I'm sure I said that. It's really not important to me now and I don't recall right now.

Q All right. Did you have an arrest warrant or search warrant on that particular morning?

A No.

Q Did you have any sound suspicion that there was any criminal activity by or of anyone on that particular bus that morning?

A No.

Q This was a random citizen contact; isn't that correct?

A Sure. Yes.

Q And how often do you go on the bus, on this particular bus at the Greyhound station on a weekly basis?

A Right now, none.

Q Well, during that time?

A It was part of our duties daily unless we were in court.

Q All right. And you also check out the airport and the train stations, too; correct?

A Yes.

Q Is there an occasion, when you check out the airport or train station, that you enter the train itself or go on the train itself or at the airport when you enter on an airplane itself?

A That has occurred, yes; both instances.

Q And that, again, is on a random, citizen contact with no founded suspicion?

A Sometimes it is. Sometimes we have founded suspicion. Sometimes we have a search warrant. It varies. In this case, we did not have a search warrant and it was a citizen/police encounter.

Q Now, Officer, on this particular morning, you were carrying a firearm, were you not?

A Yes, I was.

Q And were you not carrying that firearm in a little pouch in your hand?

A I really don't recall where I was carrying it but, after talking with my partner, I think I did have it in a pouch that day.

Q And you had one hand carrying the pouch and another hand on the firearm inside the pouch; isn't that correct?

A That is not true.

Q Well, when you approached the defendant at the back of the bus, where did you have the firearm?

A In my bag, if I did in fact have a bag that day. I don't recall.

Q Well, where was the bag? How were you carrying the bag?

A It would be in my hand if I had it.

Q Do you keep it zipped or unzipped?

A I usually keep it zipped.

Q So your testimony today, to your recollection, there's never been an occasion when you carried the pouch with one hand on the firearm when you approach somebody?

A There have been many times I had a hand on the firearm.

Q All right.

A In this case, I don't really recall.

Q Now, when you approached the defendant, what was he doing?

A Just resting on the red bag.

Q Well, he could have been sleeping, too, couldn't he?

[objection deleted]

THE COURT: Are you talking about the position? Was he sitting up, stretched out?

THE WITNESS: He was leaning over in a comfortable position. He wasn't sleeping because I introduced myself and he responded back to me.

Q (By Mr. Stoskopf) Well, first you told him to stand up, didn't you?

A No.

Q The other officer asked him to stand up?

A No.

Q So he was lying down or in a resting position and your first conversation with him was what then?

A Hello. I'm Detective Joe Nutt with the Broward County Sheriff's Office. Do you have a minute to speak with us. This is with badge and I.D.

Q What did he reply?

A Okay.

Q And he stayed laying down on the seat, or did he sit up or stand up at that point?

A He shifted up in a position where he could talk with us.

Q What did he ask you, if anything?

A I asked him questions.

Q Well, did he respond in any manner at all when you told him that and informed him you were a police officer?

A He responded that he would talk. Fine.

I then asked him where he was traveling to. He said, "I'm going to Atlanta."

I then asked him could I see his ticket and I did. [sic] He showed both of them. I returned them to him. We were having a conversation. I was doing most of the questioning, though.

Q Did the ticket confirm the fact that he had boarded the bus in Miami and purchased a ticket to Atlanta?

A I don't recall.

Q Well, did he show you the ticket?

A There was nothing out of the ordinary with his ticket or I.D. when I looked at them.

Q He told you he was going to Atlanta. Did the ticket confirm that fact?

A I don't know.

Q Did he show you identification?

A Yes, he did.

Q What did he show you?

A I think, a Florida's driver's license.

Q That didn't raise any level of suspicion or any founded suspicion of any criminal activity; isn't that correct?

A I did not have any suspicion whatsoever up until the time I found the cocaine. At that point, I did [sic] the PC and arrested him.

Q While you were asking the defendant here these questions and searching the bags, the red and blue bag, where was Williams?

A I have no idea.

Q Well, don't you recall a couple young, black fellows in the back of that bus that morning?

A I recall Williams as being a black male but I don't recall where he was at.

* * * *

Q (By Mr. Stoskopf) Was there another young fellow back there, too, in the back of the bus; do you remember?

A I have no idea. This is back in August and I really don't remember.

Q Now, prior to when you boarded the bus, you were sitting in your car, isn't that correct, at the bus station?

A I don't know what I was doing before I got on the bus.

Q So you have no recollection of where you were immediately before boarding the bus; is that right?

A Well, immediately prior, I was on the sidewalk to board the bus but before that, I could have been numerous places.

Q Were you wearing the jacket that morning or did you put it on right before you got on the bus?

A I was wearing the jacket that morning when I was on the bus. I do not recall when I put it on.

Q The other officer put the jacket on, too?

A I think he did.

Q And how is that jacket marked to identify you as police?

A Broward Sheriff's Office patches on the shoulders and on the front and on the back, it says, Sheriff's Office.

Q All right. During this period of time, did the defendant make any attempt to disembark the bus at that particular time?

A No.

Q And you had knowledge this bus, in fact, was in transit on the way out of state or going through Broward County; isn't that correct?

A I assume it was. It was not in transit when I was on it.

Q You didn't see the defendant board the bus there? He was already on the bus when the bus pulled up; correct?

A Correct.

Q You were there when the bus pulled in the terminal; isn't that correct?

A I think so.

* * *

Q Officer, are you familiar with written consent forms?

A I've seen them, yes.

Q Have you ever had occasion to use them?

A I don't think I ever have.

Q Is there any reason why you can't carry them with you and get people to sign a written consent or waiver of consent to search?

A I guess not.

Q All right. You didn't have any in your possession on this particular morning, did you?

A No.

Q What words did the defendant use when he told you you could search the bags?

A Okay. Go ahead.

Q That's in reference to the red bag or the blue bag.

A Both of them.

Q Where was the blue bag?

A The blue bag was on the overhead rack.

Q Which bag was searched first?

A The red bag.

Q And he gave you consent to search that first, initially?

A That's correct.

Q And what words did he use to give you consent to search the blue bag?

A The same.

Q And in relation to the time, what was the time difference between the time you searched the red bag and the blue bag? Almost simultaneously or a while after?

A Well, I was searching the red bag, which ended up belonging to somebody else and we didn't find anything in it. And so the time difference between just finishing that up — it was a small bag and my partner was asking him if that was his blue bag in the overhead rack and I said, "Well, is that also your bag?"

And he said, yes.

I said, "Can I have permission to search that for drugs, too? You have the right to refuse."

And he said, "Okay. Go ahead."

My partner brought it down and started the search. I would say, probably, 30 seconds.

Q So what you're saying is that you received consent from the defendant first on the red bag and, then, a second consent on the blue bag; two separate consents, is that correct?

A Definitely. I had two separate bags.

MR. STOSKOPF: No further questions, Judge.

MR. DEHART: No further questions, Judge.

(Thereupon OFFICER STEVEN N. RUBINO was called as a witness on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION BY MR. DEHART.

Q Mr. Rubino, how are you employed now?

A Deputy sheriff, Broward County Sheriff's Office.

Q Back on August 27th, 1985, were you employed in the same capacity?

A Yes, I was, at the time, with the narcotics division of the Sheriff's Office.

Q And how long had you been working narcotics?

A At that time?

Q Yes.

A With the Sheriff's Office, about a year.

Q Were you working with a partner at that time?

A Yes, I was.

Q And in that capacity, did you make contact with a Terrance Bostick?

A Yes.

Q Was this on the Greyhound bus?

A Yes, it was.

Q Who made the first contact with Mr. Bostick?

A Myself and Detective Nutt boarded the bus. Detective Nutt is the one that did all the talking that day.

Q Now, Detective Nutt talked to Mr. Bostick. Where were you situated when Detective Nutt was talking to Mr. Bostick?

A Mr. Bostick was sitting in the last seat on the driver's side of the bus and I was in the seat right in front of him.

Q You were not in the aisle or anything?

A No. I was off the aisle in front of the seat.

Q And Mr. Nutt was speaking in a normal tone of voice?

A Yes, he was.

Q Were you in uniform as you are now?

A No, sir.

Q How were you dressed that day?

A I had casual clothing on and we also, when we boarded the bus, we wear raid jackets; green windbreakers with Sheriff Department patches, insignias on them.

Q Did you have a gun at that time?

A Yes, I did.

Q Was your gun concealed or exposed?

A Concealed.

Q Did you, in any way, use your gun prior to the arrest of Mr. Bostick?

A No, sir.

Q Are you familiar with the maroon and gray bag?

A Yes.

Q Who searched that bag?

A Detective Nutt.

Q Are you familiar with the blue bag?

A Yes.

Q Who searched that bag?

A Detective Nutt.

Q When was the first time you saw the blue bag?

A The blue bag was on the overhead rack above my head and Bostick's head on the bus.

Q Do you know why Detective Nutt would have searched that bag?

A Well, while Detective was — he had already received permission from Bostick to search the red bag which later, we found out it wasn't his in the first place and while he was searching the red bag, I asked Bostick if the blue bag was also his and he stated it was and Detective Nutt searched that bag, also. That's where the cocaine was found.

Q Did you see the search of the bag?

A Yes.

Q Did you hear Detective Nutt ask for permission to search any bag?

A Yes.

Q Can you tell us what he said and when he said it?

A I don't remember the exact words but he explained to Mr. Bostick who we were and our duties on the bus; that of being narcotic agents and we contact the traveling public and ask for permission to do a consent check of bags for drugs. He asked for permission and Bostick gave him consent and he looked.

Q Was that before or after your attention had been drawn to the blue bag?

A He asked for the red bag and, then, when I saw the blue bag and asked Bostick if it was his, Detective Nutt asked him if he could search that one, also.

Q What did he say when you said that?

A He said, yes.

Q This conversation between Detective Nutt and Mr. Bostick, was it in a loud manner?

A No; normal tone of voice.

Q Was there any intimidation or show of force used to coerce Bostick in any way?

A No.

Q Was his path blocked from leaving the bus or anything like that?

A No. He was free to go.

Q Had the bus pulled off or was the bus attempting to pull off during the time that you were having a conversation with Mr. Bostick?

A No, sir.

Q Did you ever find out who the maroon and gray bag belong to?

A Yes, we did.

Q And how did you find that out?

A There was another subject that was on the bus, Mr. Williams, he stated that it was his bag. He loaned it to Mr. Bostick to use as a pillow.

Q When did Mr. Williams tell you this?

A As we were getting off the bus with Mr. Bostick after he was placed under arrest. He came off the bus with us, Mr. Williams did, and we confirmed what he said with the bus driver and gave him back his bag.

Q Do you know where Mr. Williams was seated in relation to Mr. Bostick?

A I think he was on the passenger side in front of the bathroom which is a couple of seats in front of where we were, where Bostick was.

Q On a bus, you have a big seat in the back, the very last seat that stretches across two-thirds of the bus?

A That's correct.

Q Then you have a bathroom at the very back?

A Correct.

Q In front of the bathroom, you have another seat on the passenger side?

A Right.

Q That is the rearmost seat of the passenger side where Mr. Williams would have been seated?

A That's correct. It butts right up against the bathroom.

Q Did you see Mr. Williams while you and Detective Nutt were making contact with Mr. Bostick?

A I don't particularly remember. He doesn't stand out in my mind when we first walked back there, no.

Q He never spoke to you while you were talking to Mr. Bostick or anything like that?

A No.

MR. DEHART: I have no further questions, Judge.

CROSS-EXAMINATION BY MR. STOSKOPP:

Q Officer Rubino, did either you or Officer Nutt have a ticket to board that bus that morning on August 27th?

A No. We just get on and get off.

* * *

Q Did either you or Officer Nutt seek permission of the bus driver, Mr. Black, to board that bus that particular morning?

A I don't remember if we did or not.

Q Did either you or Officer Nutt have a search warrant or arrest warrant to board that bus that morning in reference to anyone on that bus, particularly, the defendant, Mr. Bostick?

A No, sir.

Q Did either you or Officer Nutt have any reasonable, founded suspicion that there was any criminal activity on board that bus on this particular morning?

A No, sir.

Q This was just a random, public contact; isn't that correct?

A That's correct.

Q All right. Who entered the bus first?

A I don't recall offhand if it was Detective Nutt or myself. I believe it was him. He's the one that did the talking to Bostick.

Q He's kind of the lead officer? He has the experience, isn't that correct?

A When it comes to domestic intervention, yes.

Q You were already at the bus station prior to when the bus pulled in this particular morning, were you not?

A Yes.

Q You were sitting in your patrol car?

A I don't remember if we were sitting in the car or standing outside or where we were.

Q Well, this was about what time in the morning?

A About 8:00, 8:30.

Q What time did you go on duty that morning?

A Either 7:00 or 8:00.

Q Was this the first bus, then, this morning that you checked?

A I believe it was, yes.

Q Where did you put on your jackets?

A Where we park our cars right outside.

Q As the bus pulled in, you got out of the car, put your jackets on and went to the bus?

A I don't remember if we had put our jackets on and were waiting outside or sitting in the car.

Q Where, usually, do you carry your concealed weapon in plainclothes?

A Waistband.

Q Where does Officer Nutt carry his?

A I believe he has a, like, a man's purse he carries his gun in.

Q And often times, when he makes these drug interdictions, does he carry the pouch unzipped so the weapon is readily available?

A I've never seen him unzip it prior to.

Q He was carrying it in one hand?

A Yes. It's not very big. You can carry it in one hand.

Q Then, when he approaches a defendant or subject or a citizen for these random encounters, does he often-times put his hand on the gun inside the pouch?

A Not inside, no, sir.

Q Now, when you went on the bus, the first person you approached was, in fact, the defendant, Bostick, was it not?

A Yes, it was.

Q And Bostick, what was he doing in the rear of the bus when you approached him?

A Just sitting there.

Q Well, was he lying down, resting or sitting there?

A Leaning on an elbow half sitting and half lying.

Q Was his feet on the floor or up in the seat?

A I don't remember.

Q Well, he could have been sleeping or resting at that time; correct?

A I don't remember him sleeping.

Q All right. And the red bag was where?

A I believe right where his arm and head were.

Q All right. Now, you have testified that Detective Nutt had all the conversation with the defendant and all the interaction; is that correct?

A Other than asking if the blue bag was his that was on the rack.

Q Who asked him that?

A I did.

Q And what did he answer when you asked him that?

A He said it was.

Q All right. And did you say anything other than that?

A No. I believe Detective Nutt asked him if he could look in that one, also, and I took it down off the rack.

Q So he asked for permission before you moved it down off the rack, is that what you're testifying to, or after?

A I don't recall exactly. I believe it was before.

Q All right. What statutory authority did you have, on this particular morning, to enter the bus to ask passengers inside of a bus, interstate transportation of passengers, what statutory authority did you or Nutt use on this particular morning?

A We just boarded the bus. We do that almost every day.

Q Did Officer Nutt ever discuss with you on what authority?

A No. They were doing this before I entered the unit; working the buses.

Q You never questioned it either, then, is that correct?

A No.

Q What was the first conversation that you heard between the defendant and Officer Nutt on this particular morning?

A We identified ourselves, showed our badges and identification cards and Detective Nutt asked Bostick where he was traveling to.

Q What did he answer?

A I believe he said Atlanta, Georgia.

Q Then what happened?

A Detective Nutt asked to see his ticket and I.D.

Q And did he do so?

A Yes. He showed him his bus ticket and he had a Florida driver's license.

Q Did you look, also, at the identification he showed?

A No, I didn't look at it. I could see that he was holding it but I didn't look specifically at it.

Q During this period of time, you were standing behind Detective Nutt?

A Well, behind and off to one side. The last seat is a bench seat. It's three seats opposed to the regular seats which are just two, like this (indicating), and Mr. Bostick is sitting on the bench seat in the back and I was standing, like, right here (indicating) but standing up, facing him.

Q And Detective Nutt was also standing up in the aisle facing the defendant?

A He was standing next to me but kind of half-and-half.

Q All right. And did he have his hand on the pouch at that time when he was in conversation with the defendant?

A He was holding it. I don't know what you mean by his hand on the pouch.

Q Well, you were both standing in the aisle between the seats, facing the rear seat; isn't that correct.

A I wasn't in the aisle. I was in the seat but not sitting down; standing up.

Q Where was Detective Nutt?

A Next to me.

Q He was in the aisle?

A Half-and-half.

Q And where was this Williams? Wasn't he sitting within about four, five seats from the rear of the bus?

A It's about that, yes, sir.

Q And when you both walked to the back of the bus, everyone's attention was focused on you; isn't that correct?

A I don't know.

Q Well, you weren't passengers getting on and when you got on, you immediately walked to the rear of the bus with green, police jackets on. Isn't it common that most of the people on the bus or on the passenger vehicle that you enter kind of focus their attention on you when you do so?

A I don't know. I don't pay attention to anybody else but the person I'm talking to. I don't look around to see if other people are watching me or not. It's not my concern.

Q Well, you are aware when you're making these drug interdictions, that other people are on the bus and you are prepared to ask them questions and search their bags, too, with permission, aren't you?

A That depends.

Q It depends on their permission?

A Or if we made an arrest before we get a chance to talk to anybody else on the bus.

Q If Mr. Bostick wasn't there, you would have started at the rear and worked your way up toward the front; correct?

A Correct.

Q Is that a standard procedure?

A Yes.

Q And you would have asked someone else on that bus, would you not have, for permission to search?

A It's possible.

Q Getting back to this consent, what word did the defendant use when Nutt asked him if he would mind him going through the red bag first? What did he say?

A What did Nutt say?

Q Tell me again the conversation.

A We explained to him our duties, like I stated earlier, and asked for permission to search the bag and Bostick gave an affirmative answer. I don't know exactly what he said at this time. He either said, yes, or go ahead, something to that effect.

Q All right. And at that point, who searched the red bag?

A Detective Nutt.

Q How long after that did you call attention to the blue bag up front?

A It was while he was searching the red one.

Q All right. And who brought the blue one down from the top?

A I did.

Q And when you brought the blue bag down, Detective Nutt was still searching the red bag?

A I don't remember if he was or not. I don't know if he had concluded it or was still looking.

Q How did he conclude the search of the red bag? Did he put all the belongings back inside first or —

A I believe he zippered it up and went to the blue one.

Q Who put the things back in the red bag?

A Detective Nutt.

Q Then he went right to the blue one?

A Yes, sir, I believe so.

(Thereupon TERRANCE BOSTICK, the defendant herein, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION BY MR. STOSKOPF:

Q State your name and address.

A Terrance Bostick, 1127 Northwest 1st Place, Apartment 5.

Q All right. Was there an occasion, Mr. Bostick, in August of 1985, that you bought a bus ticket?

A Yes, sir, I did.

Q And what was your destination?

A Atlanta.

Q Where did you board the bus?

A Downtown Miami.

Q And what day of the week was this; do you recall?

A It was Monday morning, to my recollection.

Q What time did you board the bus?

A About 6:00, 6:30, something like that there.

Q All right. Was it your intention, when you boarded that bus, to stay on that bus until you reached your destination in Atlanta, Georgia?

A Yes, it was.

Q Did you, at any time, attempt, or was it your intention to disembark the bus in Broward County or Fort Lauderdale for any reason whatsoever?

A No.

Q All right. Was there a time when the bus pulled into the station in Fort Lauderdale?

A Yes, there was.

Q All right. And what were you doing when the bus pulled in the station?

A Well, I was laying in the back, trying to get some sleep.

Q And did you have an occasion to have in your possession, a red bag at that point?

A Well, it wasn't my red bag. It was a young man on his way to Kentucky or somewhere.

Q How did you happen to get possession?

A We were just talking and I wanted to go to sleep and I have no bag and I asked, can I borrow one of his bags.

Q He loaned you the bag?

A Yeah.

Q And what next do you remember when the bus was parked in Lauderdale at the bus station?

A I was sleeping. I felt someone touching on my feet. I was laying across the back of the bus.

Q What happened then?

A The officer, the little skinny one said, "Do you have any I.D.?"

He asked me did I have a bus ticket first. I said, yes, sir, I did.

He said, "May I see it?"

And I showed it to him.

And he said, "Do you have any identification?"

Q And what did you respond?

A I said, "Yes, sir."

Q And you showed him identification?

A Yes.

Q What did you show him?

A My driver's license.

Q Then what happened?

A And then he says, "Well, is this your bag?"

Then I says, "Yes."

Then I didn't answer.

He said, "Can I search it?"

And I looked at Williams and he said, "Yes, sure."

Q Then what happened?

A He went to searching through the bag.

Q Then what happened?

A Then from there, they asked Mr. Williams was all them bags his up there and they asked him can they search his bags and things. They search his bag and, then, the gentleman on the other side, they went fumbling through his bag.

Q At any time prior to when they searched the red bag or any other bags on that bus, did they ask permission to search?

A On the red bag, yes.

Q What did you tell them?

A I asked Mr. Williams' permission at first.

Q Now, did there come a time when they asked your permission on the blue bag?

A Yes.

Q What did you say?

A I didn't quote [sic] anything.

Q Well, who else was in the back of the bus other than you and Mr. Williams?

A It was a fellow going to Detroit. I can't think of his name. And there was an old man, old, Caucasian male that had just got on the bus.

Q Well, when these conversations were going on between you and the officers, were the rest of the people turned around in their seats, watching and listening?

A Yes.

Q Now, your testimony is here today that prior to the search of the blue bag, that you never granted permission or consented to either one of these officers to search that bag?

A No, sir, I didn't.

Q When Detective Nutt first approached you, what did he have in his hand, if anything?

A A black pouch.

Q All right. What did you believe to be in that pouch?

A A pistol, the way he was gripping it.

Q All right. Did he, at any time, take out identification and identify himself as a police officer?

A After he looked at my identification and everything.

Q Okay. Did he say anything else to you?

A No, sir.

Q Did he ever advise you, Mr. Bostick, that you could refuse a consent to search and that you would be free to leave or free to continue your journey? Did he ever advise you of that?

A No, sir, he didn't.

Q Did he ever advise you that he was in some kind of drug interdiction program or have a conversation similar to what you heard from the other officer here today?

A No, sir, he did not.

Q Have you ever been arrested before, Mr. Bostick?

A Yes, sir, I have.

Q You have had several little incidents with the police, have you not?

A Yes, sir.

Q It is your testimony here today that you would not voluntarily consent to any search of your bag, particularly, when it might have contained drug substances?

A Right.

MR. STOSKOPF: No further questions, Judge.

CROSS-EXAMINATION BY MR. DEHART:

Q Mr. Bostick, did you know that cocaine was in your bag?

A No, sir.

Q (BY MR. DEHART) For all you know, there was nothing in that bag but the clothes?

A To my knowledge.

Q Just like the first bag. So there's nothing unusual about consenting for someone to search your bag?

A The first bag wasn't my bag.

Q This first bag, you did tell him it's okay to search it?

A After I got consent from Mr. Williams.

Q You're saying that you asked Mr. Williams?

A Yes.

Q You asked him is it okay?

A Yes.

Q And that's when you said, okay?

A Yes.

Q How did you ask Mr. Williams that?

A Well, we were looking at each other and I did like this (indicating) and said, is it all right and he says, yes.

Q Mr. Williams is sitting on the opposite side?

A Of me.

Q And he's sitting in front of the bathroom?

A Right.

Q And you're sitting on the back seat?

A Right.

Q And Officer Nutt is halfway in the aisle and halfway on the seat in front of you?

A Yes.

Q And Officer Rubino is on the seat in front of you?

A No, he wasn't on the seat. He wasn't halfway on the bus at the time. Officer Rubino, the blond-haired one?

Q The blond-haired guy.

A Yes, with Nutt. The skinny one in jeans.

Q *** Nutt searched both bags; correct? Detective Nutt, the blond-haired guy you just saw, he searched both of the bags; correct?

A No.

Q Or he searched one?

A He searched one.

Q And the other guy searched the other one?

A The other guy searched the other one.

Q Did you ever see a gun?

A No, sir.

Q Now, was the pouch open or did he just have his hand —

A He just had his hand inside of the pouch.

THE COURT: What do you mean, inside of it?

THE DEFENDANT: Inside the pouch. He had it zippered like it ain't going to slip off his hand or nothing like that there.

Q Let's talk about the ununiformed guy in here today, Detective Nutt, was that the guy who had the pouch?

A Yes.

Q Was that also the guy who searched Mr. Williams' bag?

A Yes.

Q Now, how did he search Mr. Williams' bag and keep his hand on the pouch?

A Well, he didn't have his hand on the pouch while searching the bag.

Q When did he have his hand on the pouch?

A When Mr. Nutt went to search — I mean Mr. Rubino went to search another bag. The uniform, I put it like that.

Q When Detective Nutt first approached you, he didn't have his hand in that bag, did he?

A No, no.

Q And when he first approached you, he did say hello?

A No. He woke me up. He tapped me.

Q He told you he was a police officer?

A No. He asked me did I have a bus ticket.

Q Okay. And what did you say?

A I says, sure. He asked me could he see it.

Q And he didn't say nothing else to you?

A And he seen my I.D. and everything, then he —

Q Wait a minute, now. You wake up and see this white dude that don't have nothing on but his uniform and he says, can I see your ticket and you say, okay?

A Yes. I know I had a ticket.

Q You didn't question him as to who he was or what he was doing?

A No.

Q And he never told you?

A No.

Q You just gave him the ticket?

A My identification.

Q And he asked, is there anything in your bag?

A Yes.

Q You knew Williams before you got on there?

A No. I seen him once or twice from our community.

Q So the first thing Nutt said was, whose bag is this?

A Yes.

Q He didn't say, can I search the bag first?

A No.

Q So he said, whose bag is this?

A He said, whose bag it was.

Q And when he said that, you didn't raise up and point across the aisle and say, his, did you?

A No, no.

Q You said what?

A I said mine because I was laying on it at the time.

Q Now, at this time, you didn't know who he was from Adam?

A No.

Q And he hasn't shown you any badge or anything?

A He hadn't shown me any identification.

Q And so he starts searching the bag; correct?

A Yes.

Q Now, does he still have his hand inside his pouch when he's searching the bag?

A No, he did not.

Q His hands weren't inside the pouch yet?

A Not at that moment.

Q Where is his pouch?

A Under his shoulder right now.

Q Okay. And is he loud with you?

A Well, what you call loud?

Q Louder than this?

A Not louder than this.

Q Is he threatening you or anything?

A No, he wasn't threatening me.

Q He's just talking to you?

A Yes.

Q So you give him that bag and he searches it?

A Yes.

Q You never tell him that it's Williams' bag?

A No.

Q There was a blue bag there?

A Yes.

Q And that blue bag was overhead?

A Yes.

Q And that blue bag was taken down; correct?

A Yes.

Q Who took down the blue bag?

A The uniform one.

Q The uniform guy that was in here today, his name would be Rubino; correct?

A Yes, yes.

Q And are you saying that Rubino searched that bag?

A Yes.

Q And Nutt didn't search that bag at all?

A Well, Rubino opened it and both searched it together. He pulled it down off the rack.

Q Did they ask you whose bag that was?

A Yes.

Q And what did you say?

A I replied, yes, it was mine.

Q Did they ask you to search the bag?

A No.

Q Did you say, stop, don't search my bag?

A No. It was already open.

Q Did you ever tell them to stop, don't search this bag?

A No, sir.

Q Did you ask him what right you got searching this bag?

A No, sir.

Q They hadn't even showed you any badge, hadn't showed you anything?

A At the time, no.

Q They were just some dudes going through your bag; right?

A Yes. They went through all the other folks' bags, also.

Q Wait a minute. You're number one.

A Yes.

Q You're sitting in the back. They go all the way on the back of the bus and start working forward?

A They didn't search the red one, then, the blue one. They searched the red one and searched Williams' luggage.

Q You were the first person on the bus so they hadn't searched anybody when they searched your bags; correct?

A They searched the red one first, then, they searched the rest of them.

Q And they had never told you anything about who they were?

A No.

Q And you never objected to these two white dudes going through your bag?

A No.

Q What were you thinking?

A I was trying to get some rest.

Q You really didn't care about them searching the bag?

A If it was up to me, yes, I did care but, then, who was I to say?

Q Did you pack that bag?

A No, sir, I did not.

Q You didn't pack the bag?

A No.

Q Was that your clothing inside the bag?

A A pair of slacks, yes.

Q I mean, the clothes inside the bag? I'm talking about the blue bag, the clothes inside the bag, they were yours?

A Yes.

Q And you packed the bag?

A Yes.

Q And you knew that there was cocaine in the bag?

A Yes.

Q Did they ever tell you that they were police officers?

A No, sir, they did not.

THE COURT: Well, when?

THE DEFENDANT: When they arrested me.

Q (By Mr. Dehart) They said, you're under arrest?

A Yes.

Q Was that on the bus when they said you're under arrest?

A Yes.

MR. DEHART: I have no further questions.

* * * *

REDIRECT EXAMINATION BY MR. STOSKOPF:

Q Mr. Bostick, is the first thing you saw when you got up was a hand in a pouch?

A Yes.

Q And you had a lot of reason to believe what was inside that pouch?

A Yes.

Q Did you think there was a firearm inside that pouch?

A Yes, yes.

Q All right.

A He asked me, why didn't you try to run. That's what Nutt said.

Q When did he ask you this?

A After he was taking me off the bus?

I said, "For what? So you cold shoot me in the back?"

Q Well, Defendant Bostick, you have given the impression here in court today that you never knew that these were police officers.

A No, sir. They never identified themselves as officers. I knew they were officers. They never did identify themselves.

Q Well, when they woke you up and the officer had his hand in the pouch with a firearm, who did you think they were then?

A Officers.

Q All right. Now, one more time, did they ever ask and did you ever give consent to search the blue bag, the bag the cocaine was found in?

A No, sir, I did not.

MR. STOSKOPF: No further questions.

MR. DEHART: I have no further questions.

THE COURT: Judge Moe has ruled on these, hasn't he? I think it's going up.

MR. DEHART: On the consent on these bus stops, on the validity of entering the bus?

THE COURT: Yes. Well, whatever the issue is, he didn't like the whole picture, which I'm not crazy about, either, but when you've got sworn testimony from two police officers and they're testifying, sometimes you don't have much other than that and you have to go along with the sworn testimony but it does really stretch the imagination when they're standing there in an aisle and talking to someone and just checking all the bags. It's very intimidating even if there is consent.

THE COURT: But the police do have a right — and I guess you and I would, too — we can step on a bus and walk in and talk to somebody and I guess the police can step on a bus and walk up and talk to somebody and say, can we check your bag. I don't know if that's contrary to any law, is it?

MR. STOSKOPF: They would have an opportunity on a public road but, in this case, it's at the Greyhound station that is quasi-public because you have people coming in and out and boarding the bus. My legal point is, I don't think they would have a right to enter an airplane without reasonable suspicion first that someone on that particular plane was committing something and then, they have founded suspicion to go in and use the stop and frisk law to ask them for identification. If there's no reasonable, founded suspicion as in this case, there isn't — my theory is, they do not have a right to step on board a private Greyhound bus to talk with passengers that are on

an interstate vehicle as a passenger going from Dade County to Atlanta and they do not have that right. They don't have a statutory authority for stop and frisk unless they have a reasonable, founded suspicion prior to their confrontation. If they do, then, they can go after anyone in Broward County but if they don't have that, they have no right or authority to enter a Greyhound bus to interact with the passengers. That being so, even if you find, by the preponderance of the evidence, that he gave consent, my theory is, it is invalid.

In this case, I think the evidence is that he didn't give consent, plus, if you recall that he did, my theory is that they don't have the right.

MR. DEHART: If it please the Court, Your Honor, I can get case law that says a contact is not a stop and frisk. It's less than even that and a contact is simply that. It is a social interaction. It is just about what they have called it and that is no burden whatsoever. There's no reasonable suspicion. There is no nothing. It is just a random contact, therefore, the "stop-and-frisk" law really doesn't apply to this because they don't need reasonable suspicion or anything. It is just a contact.

[Whereupon the court adjourned without ruling on the motion to suppress].

IN THE
**Circuit Court of the 17th Judicial
Circuit, in and for Broward County,
Florida**
Criminal Division

Case No. 84-10543 CF

STATE OF FLORIDA,

Plaintiff,

vs.

TERRANCE BOSTICK,

Defendant.

1461 Northwest 17th Avenue
Miami, Florida
Friday, June 6, 1986
1:35 p.m.

DEPOSITION OF GEORGE A. BLACK

taken before Eva Sosa, Court Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

APPEARANCES:

JAMES DEHART, ESQ.
Assistant State Attorney
On behalf of the Plaintiff.

LAW OFFICES OF MAX P. ENGEL
By: LOUIS B. STOSKOPF, ESQ.
On behalf of the Defendant.

Thereupon—

GEORGE A. BLACK,

a witness herein, called at the instance of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. STOSKOPF:

Q Mr. Black, would you please state your name and address, please.

A George A. Black, III., 3640 Northwest 9th Street, Fort Lauderdale.

Q All right.

What is your occupation, Mr. Black?

A Greyhound operator, bus driver.

Q How long have you been in that capacity?

A 16 years.

Q Did you have occasion to be in charge of the Greyhound bus on August of 1985 in which there was an arrest made of the defendant in this case, Mr. Bostick?

A Yes, I do. [sic]

Q Now, directing your attention to when you came into the Fort Lauderdale station that morning, do you recall seeing the officers there that morning when you pulled in?

A Yes, because they were standing right out front.

Q And then relate now what happened when you stopped the bus in front of the Fort Lauderdale station, what took place?

A All right.

When I stopped the bus at Fort Lauderdale, I got out of the driver's seat and the two officers came up to the bus. I opened the door, because I recognized them. They got on the bus and I closed the door and went in the bus station and had a cup of coffee.

Q Do you recall specifically if either one of the two officers that got on the bus that particular morning requested permission from you to board the bus?

A No, he didn't say anything. I just recognized the green Broward County Sheriff's jacket. And normally they have been doing this for about, oh, two or three months, and I didn't recognize the tall guy, but—see, normally there is a young lady that checks the bus also and we recognize them, so we give them no hassle, we just let them on the bus.

Q But in this particular occasion neither one of the two officers requested permission to board your Greyhound on this particular morning, is that correct?

A Right, because when he came up to me I had my back turned. And when I turned around and looked he was boarding the bus. And, all I saw was the Broward County Sheriff's green jacket. So normally I don't say anything, I just close the door and let them do their job and I go have me a cup of coffee while they are doing it.

Q If the officers do not board your bus, approximately how long are you there in the bus station on a normal route, when it's not searched?

A Okay. We have a certain time, we have a pickup time and a leaving time. They don't give us two or three minutes there. When I get to Fort Lauderdale, I load my passengers up, load my freight and I leave and that's it.

Q Am I to assume you loaded these people and took their tickets and everything prior to when the officers boarded the bus or did you do it subsequent to the officers boarding?

A Okay.

This is what happened. I loaded the two kids from the Job Corps. And, at this time I was given some information to one of the passengers that was standing outside of the bus. And, at this time that's when two officers came up and when I turned and looked he was boarding the bus. And, that's when I closed the door and told the person that as soon as the officers got through checking the bus that I'd load them on the bus. So I went inside and had a cup of coffee.

Q And this particular passenger then waited outside the bus?

A They waited outside the bus.

Q And the reason why you told them to wait outside the bus is because the officers were on the bus?

A Yes.

Q And you closed the door for what reason?

A Because I didn't want—I guess I didn't want them to be disturbed while they were doing their check. I closed the door to keep other passengers from getting on while they were doing their check.

Q All right.

Q Now, normally if the officers would not have boarded the bus to search, what would you have done after taking the tickets from the passengers?

A Go inside the station, call the station in Miami, the dispatcher in Miami, let him know how many passengers I got and how many passengers I'm going to arrive with in West Palm Beach.

Q And then what?

A Then I leave.

Q How do you leave the bus when you leave the bus and go inside and call?

A I close the door and go inside.

Q And the reason for you to close the door when you go inside the bus station is for what reason?

A To keep anyone from getting on without me seeing the tickets.

Q All right.

Mr. Black, what are your rules and regulations as far as people going inside the Greyhound bus? Can anyone go inside the bus, a Greyhound bus when it stopped to pick up passengers at a bus station?

A Not without showing us a ticket or having valid reason for getting on the bus, they cannot go on the bus.

Q Does anyone have a valid reason to ever open and close the baggage compartment on the Greyhound other than you and the baggage handler?

A No one.

Q Has in the past, Officer Hutt [sic], who you recognized, I assume that morning, correct?

A Uh-huh.

Q Has he ever in the past opened the baggage compartment of the bus there without you permission?

A Yes, he have. [sic]

Q And have you had a discussion with him on any occasion pertaining to his authority to open the baggage or anything?

A No. No, I never had a discussion with him on that part.

Q All right.

On this particular morning then, after the officers were inside, then you said you went inside and had a cup of coffee. What was the time lapse from the time you were inside to when you went back to the bus?

A It was 20 minutes, and it was too long. Normally when they check the bus it takes five, 10 minutes and they finish. But, this particular morning it took 20 minutes. And, I wanted to know the reason why it took so long.

Q You went back to the bus?

A I went back to the bus.

Q And what happened then when you went back to the bus?

A When I went back to the bus I went to open the door. At this time this is when they had Bostick in handcuffs bringing him off the bus. It was approximately—they was right at my seat, coming off the bus when I went back to the bus. And, so I stepped back and let them off the bus.

When I stepped back and let them off the bus then this kid came up to me and said, "Driver, they have my bag." So, I went to the officer, the tall guy and I told him he had the wrong bag, he had the kid's bag. The kid was going to Job Corps and needed his bag. And, this is when the officer told me that—he asked me a question, "Are you trying to tell me my job?" I said, "No, man, I'm not trying to tell you your job, I'm just saying"—I used the expression, "Wrong damn bag." The guy is not coming to Fort Lauderdale for two years, how they hell are you going to get his bag to him. By the time he gets his Job Corps—then me and him got in a slight hassle.

I went inside the bus station to call my supervisor to let him know what was going on, there was a traveler and the officer had no reason to take his bag.

So I told the officer to look in the bag to see if there is anything in there. He told me, "It's loaded with cocaine." That's when I shut up. Then the kid kept bugging me. I went back in the office, "Why don't you search the bag—see if there is anything in there." So, he searched the bag and it was toilet articles and he gave the kid his bag back.

By this time I called my supervisor and the officer was talking to my supervisor, but he didn't give me the phone back, he hung up. And, my supervisor called me back and she said, "George, that was a pretty nasty officer, wasn't it?" I said, "Yes, if I could take him in the back me and him would tie it up."

Then I hung up. Then I went back to the bus and loaded the rest of my passengers and I took off, never heard any more of it.

Q So your testimony then is if it hadn't been for the officers boarding the bus at that particular time when they did, you were prepared to leave at that time as soon as you made your phone call?

A As soon as I made my phone call I was prepared to leave.

Q Is it your testimony today that the officers boarding the bus they delayed the bus in its normal schedule of leaving?

A I think I was 30 minutes late getting to West Palm Beach, but I made time up on the Turnpike, so I was like 10 minutes late getting to Orlando.

Q And you were on schedule, on time when you arrived at Fort Lauderdale?

A I was on time, yes.

Q Now, have you ever been on the bus in the past, Mr. Black, when the officers searched anyone? Had you ever remained in the bus and observed them and overheard them when they searched?

A No, I never do that.

Q So, it's your testimony then that you always disembark and if the officers go on the bus you go into the station, drink a cup of coffee and you wait till they come off the bus, is that correct?

A That's correct.

Q Has the Greyhound Corporation ever issued any instructions or any directives on how the bus drivers or the station managers are to handle searches by officers, to your knowledge?

A No.

Q Have you ever made inquiry to Greyhound or anyone in the managing capacity as to how you should proceed in the future or back in August of '85 how you should handle the officers when they request to search the bus?

A Well, I talked to one of my supervisors, Mr. John Parre when he was down here. He is not here any longer. I talked to him about it. And, I just didn't like the way they was doin' it. They hassled some of the passengers. A lot of the drivers are getting very pissed off about it, especially the older drivers. They are making all the schedules late leaving Fort Lauderdale and they got to leave Jacksonville and they're trying to get home. So, the hassle is they are hassling the people and they are delaying the schedule. I talked to the supervisor. They tell us there is nothing they can do about it.

CROSS EXAMINATION (by telephone) BY MR. DEHART:

Q Is it correct that you didn't hear any of the conversation with Mr. Bostick?

A No, I didn't hear what was going on inside the bus.

Q * * * Did you say that Mr. Bostick got on and he began to tease you about being black, that's how you recognized Bostick?

A Yes.

Q Did he have any baggage with him then?

A To my recollection I think he had a small bag, like a gym bag or something like that.

REDIRECT EXAMINATION BY MR. STOSKOPF:

Q Mr. Black, you mentioned that they search the bus all the time and they frequently search the baggage in this period while you were driving this route, is that correct.

A Right.

Q So by boarding the bus while you're standing there and before the passengers get on, they were supposed to get on that bus, they delay the departure of that bus by the fact they get on the bus, is that correct?

A Yes, they do.

Q No matter how fast they search the bus, the fact is that they delay it?

A They delay it.

In The
**Circuit Court of the 17th Judicial
Circuit, in and for Broward County,
Florida
Criminal Division**

Case No. 85-10543-CF

STATE OF FLORIDA,

Plaintiff,

vs.

Florida Bar #: 109795

TERRANCE BOSTICK,

Defendant.

**SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION TO SUPPRESS**

COMES NOW the Defendant, TERRANCE BOSTICK, by and through his undersigned attorney and files this Supplemental Memorandum in Support of Motion to Suppress and states as follows:

A summary of testimony and depositions submitted in evidence as to important issues is outlined below.

In this case, please note that the following designations will be used:

"D" - Deposition of witness George A. Black.

"T" - Transcription of testimony at hearing on Defendant's Motion to Suppress heard on March 24th, 1986.

Defendant was a paid passenger on a federal licensed interstate carrier who was ticketed, hence contracted, for interstate transportation from Miami to Atlanta, Georgia.

A scheduled stop was made in Fort. Lauderdale, Florida to disembark and embark passengers.

Several passengers disembarked and several passengers boarded. (D-7). The bus driver then normally closes the bus door, walks into the office, telephones Miami and informs them of his passenger count. (D-9). He then walks back to the bus and departs. This scheduled stop normally takes approximately five minutes. (D-7). If officers board the bus to conduct their investigatory citizen contact, the scheduled stop is invariably delayed. (D-23).

On Defendant's arrest date due to the officers actions in boarding Defendant's bus and searching Defendant belongings, the bus was delayed over 20 minutes. (D-11).

On the subject date no permission was sought by the officers of the bus driver to board the bus nor did the bus driver grant permission. (D-6,7). The officers do not refute this fact in testimony during the hearing nor on deposition. The driver does admit on deposition he observed the officers board the bus knowing their purpose. (D-6,7). After the officers boarded the bus the driver closed the bus doors and went to drink coffee waiting for the officers to exit the bus. (D-8).

The driver further testified that upon his return to the bus he opened the doors, stepped on the bus and had an immediate conversation with witness Bryant K. Williams of the Job Core program. Mr. Williams was complaining that the officers had taken his red bag that he had loaned Defendant Bostick. Defendant was being removed from the bus. The driver intervened and the red bag was returned to witness Mr. Williams.

There exists conflicting testimony from the other four witnesses, as to the conversation between Defendant and the officers in the rear of the bus which bears directly on the issue of consent.

The officers position is of course they identified themselves, informed Defendant of the nature of their inquiry regarding drugs, asked for Defendant's permission to 'search' both bags, and advised Defendant that he had a right to refuse. All witnesses agree the red bag was searched first and produced nothing. The blue bag was pulled down from the overhead rack and searched second. The drugs were found wrapped in a paper bag, inside of a plastic bag, inside the blue bag.
